IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12783 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDULBARI @ MUNNO ABDULKADIR SHAIKH
Versus
COMMISSIONER OF POLICE AHMEDABAD

Appearance:
1. Special Civil Application No. 12783 of 2004
MR JK PARMAR for Petitioner No. 1
RULE SERVED for Respondent No. 1-2
MR HM PRACHCHHAK AGP for Respondent No.3

CORAM : HON'BLE MR.JUSTICE J.R.VORA
Date of decision: 12/01/2005

ORAL JUDGEMENT

1. By way of filing this Special Civil Application, the petitioner has challenged the order passed by the Police Commissioner, Ahmedabad on 08.07.2004 in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short] directing the detention of the petitioner as a dangerous person, within the meaning of the PASA Act. The petitioner is detained in pursuance of

the said order from 08.07.2004.

2. The grounds of detention as served upon the petitioner and placed on record discloses that firstly, the detaining authority relied upon two criminal cases registered against the petitioner, one at Kagdapith Police Station on 01.05.2004 for the offences punishable under Sections 394 and 114 of the Indian Penal Code, while second crime came to be registered at Satellite Police Station on 23.05.2004 for the offences punishable under Sections 394 and 34 of the Indian Penal Code. In first case, it was alleged that the petitioner and his co-accused snatched the chain worth Rs.6,000-00 from the complainant, while in second case, the allegations are about the robbery of amount of Rs.6,000-00. The detaining authority took into consideration exhaustively investigation papers in both the cases registered against the petitioner. In addition to this, secondly the detaining authority relied upon two incamera statements of the witnesses as recorded by sponsoring authority on 30.06.2004 and on 01.07.2004 and verified by the detaining authority on 06.07.2004. One witness disclosed incident occurred on 11.05.2004 wherein he stated that the petitioner and his associates came to him with one broken chain and attempted to pledge said broken chain with the witness for Rs.4,000-00. On refusal by the witness, he was dragged by the petitioner and his associates and was brought to the public place where the witness was beaten. The petitioner and his associates took out knife and show to the witness and though the persons gathered around the place but due to threat of the petitioner the persons gathered ran away from that place. The public traffic was disturbed, the area became terror stricken. While second witness stated the incident occurred on 17.05.2004 and on that day the witness was standing near Kakaria Bus Stand, the petitioner alognwith his associates came in autorickshaw and took the witness in autorickshaw to Raipur Darwaja. When witness accosted about where was he being taken, the petitioner and his associates threatened the witness with knife and took out Rs.1,400-00 in cash from the pocket of the shirt worn by the witness. The witness was pushed out from the rickshaw and, thereafter, he was beaten by the petitioner and his associates. The persons were gathered around, but the petitioner and his associates rushed towards the crowd with open knife and, therefore, the crowd ran away, the area became terror stricken and routine public life was disrupted. From the above material, the detaining authority reached to the conclusion that the petitioner was a dangerous person within the meaning of PASA Act and always kept with him

deadly weapon. In conclusion of detaining authority, the petitioner was head strong person and was obstruction to the maintenance of public order due to his above anti social activities. The detaining authority also came to a conclusion that this anti social activities of the petitioner was required to be prevented forthwith. The detaining authority also took into consideration the fact that in first case filed against the petitioner, he was released on bail, while in second, the bail application came to be rejected by the Competent Court as filed by the petitioner and his co-accused. The detaining authority came to a conclusion that though at the time of passing of the order, the petitioner was in judicial custody, but at any time, the petitioner was likely to move bail application again in the Court and was likely to be released on bail. On releasing on bail, in view of the detaining authority, the petitioner was likely to continue his illegal anti social activities. Therefore, as last resort, the detaining authority passed the order of detention against the petitioner, which is under challenge in this petition.

3. Learned advocate Mr.J.K.Parmar for the petitioner and learned AGP Mr.H.M.Prachchhak, for the respondent No.3 were heard at length. The affidavit-in-reply as filed by the detaining authority and placed on record by the learned AGP is also taken into consideration.

4. Out of diverse grounds urged on behalf of the petitioner to challenge the order of detention and vehemently opposed and controverted by the learned AGP, it appears that this matter can be decided on the ground of non-application of mind by the detaining authority as to likelihood of the petitioner to be released on bail. Learned advocate for the petitioner makes a statement that the petitioner and his co-accused had preferred the bail application in second case being Criminal Misc. Application No.632 of 2004, which came to be dismissed by the learned Additional Sessions Judge, Ahmedabad (Rural), Fast Track Court No.5 on 06.07.2004. Learned advocate Mr.Parmar further makes a statement that after rejection of the said bail application, till today no bail application was preferred by the petitioner and he remains in judicial custody in the said case.

5. Thus, it is clear that when order came to be passed against the petitioner, he was in judicial custody and his bail application came to be rejected by the Competent Authority, even before the passing of the order of detention. Then the question would arise that what was the material before the detaining authority to reach

to a subjective satisfaction that the petitioner was likely to move the bail application again and was likely to be released on bail, so as to continue his anti social dangerous activities. On going through the grounds and the material placed on record, which was placed before the detaining authority nothing stems out to lead to infer that the petitioner at first place was likely to move bail application again when his bail application on merits came to be rejected only on 06.07.2004 by the trial Court. Needless it is to say that when this material was not available with the detaining authority, there was also total absence of material to reach a subjective satisfaction that on filing the bail application again, the petitioner was likely to be released on bail. True it is that the order of detention can be passed even if the detenu is under judicial custody then in that case, there must be some cogent material available before the detaining authority to reach to a subjective satisfaction that the judicial custody of the detenu was likely to be ended and that the detenu would be open at large to continue his illegal activities. In the present case, in fact, after rejecting the bail application of the petitioner by the Court Competent on 06.07.2004, there was no likelihood of filing of the bail application again on merits. Therefore, despite the above fact, the detaining authority passed an order of detention on 08.07.2004 in absence of material to even infer that the petitioner was likely to file bail application again. The facts of the case are covered by a decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 S.C. 3675 wherein the Apex Court ruled that the detenu is likely to be released on bail, inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. In this view of the matter, the order of detention passed against the petitioner suffers from the vice of non-application of mind and is required to be quashed and set aside.

6. In the result, in view of the above discussion, this Special Civil Application is allowed. The order passed by the Police Commissioner, Ahmedabad City on 08.07.2004 against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner Abdulbari @ Munno Abdulkadir Shaikh is directed to set at liberty forthwith, if he is not required to be detained in any other purpose. Rule made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)